



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 26.02.1997  
COM(97) 37 final

97/0038 (AVC)

Proposal for a

COUNCIL DECISION

CONCERNING THE CONCLUSION BY  
THE EUROPEAN COMMUNITY OF THE UNITED NATIONS CONVENTION OF  
10 DECEMBER 1982 ON THE LAW OF THE SEA AND THE AGREEMENT OF  
28 JULY 1994 ON THE APPLICATION OF PART XI THEREOF

The Annex has not been reproduced.

(presented by the Commission)

## EXPLANATORY MEMORANDUM

1. On 7 December 1984<sup>1</sup> the European Community signed the UN Convention on the Law of the Sea, one of the most important codes of international law. This is an area in which the Community has extensive powers, notably with regard to commercial policy, fisheries and the environment. Article 306 of the Convention and Article 3 of Annex IX thereto, which concerns the participation of international organizations, stipulate that an international organization may deposit its instrument of formal confirmation if a majority of its member states are parties to the Convention.
2. On 28 July 1994<sup>2</sup> the European Community signed the Agreement on the application of Part XI of the UN Convention on the Law of the Sea, Article 4(4) of which provides that international organizations are subject to the conditions laid down in Annex IX to the Convention. The Community has been applying the Agreement and Part XI of the Convention provisionally since 16 November 1994.
3. The Convention and the Agreement (Annex 1) entered into force on 16 November 1994 and 28 July 1996 respectively. A number of the Community's Member States are now parties to the Convention and the Agreement: **Germany** (14 October 1994), **Italy** (13 January 1995), **Austria** (14 July 1995), **Greece** (21 July 1995), **France** (14 April 1996), **Ireland** and **Finland** (21 June 1996), **Sweden** (25 June 1996) and **the Netherlands** (28 June 1996) have deposited instruments of accession or ratification.
4. Now that a majority of Member States are parties, the conditions laid down in Article 3 of Annex IX to the Convention and in Article 4(4) of the Agreement have been fulfilled. The European Community may in its turn deposit an instrument of formal confirmation and become a party to the Convention and the Agreement. In the absence of such formal confirmation, the Community's provisional membership of the International Seabed Authority will expire on 16 November 1998.
5. Under Article 5(1) of Annex IX to the Convention and Article 4(4) of the Agreement, the Community's instrument of formal confirmation (Annex 2) must contain a declaration specifying the matters governed by the Convention and the Agreement in respect of which competence has been transferred to the Community by those Member States which are parties to them (Annex 3).
6. Similarly, in accordance with Article 310 of the Convention, the instrument of formal confirmation should contain a declaration clearly defining the legal scope of a number of provisions specifically concerning fisheries policy in order to counter the tendency of some other contracting parties towards creeping regulation.

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<sup>1</sup> Council decision of 6 December 1984, not published

<sup>2</sup> Council decision 94/562/CE of 25 July 1994 ( OJ N°L 215, 20 August 1994)

7. On the subject of procedures for settling disputes about the interpretation and application of the Convention, the Commission feels that the Community, under Article 287 of the Convention, should cleave to the position of the majority of the Member States that have already deposited ratification instruments and should not, at this point in time, specify a particular means of dispute settlement, given that the Convention allows it to amend its position at any time and opt for a given procedure by means of a written declaration pursuant to Article 287(1) of the Convention.

In order to maximize the effectiveness of this option and signal its attachment to judicial dispute-settlement procedures, the Commission proposes that the Council, when it comes to adopt the decision concluding the Convention on the Law of the Sea, annex to its minutes a declaration by the Council and the Commission undertaking to review dispute-settlement arrangements within a reasonable time, i.e. once the procedures have been in operation long enough to enable an informed choice to be made (see appendix).

Pending such a decision, disputes between the Community and third countries will be subject to the arbitration procedure laid down in Annex VII to the Convention.

8. Given that the Community is currently a provisional member of the International Seabed Authority and intends to become a full member, it should be confirmed that the positions to be adopted by the Community and its Member States in the Authority will be finalized according to the procedure laid down in the mandate of the Working Party on the Law of the Sea (Annex 4).
9. The Commission therefore proposes that the Council decide as follows:
- (a) the Community should endorse the United Nations Convention on the Law of the Sea and the Agreement on the application of Part XI of that Convention by depositing its instrument of formal confirmation;
  - (b) the Community should furnish the depositary with the declaration specifying the competences transferred to it by the Member States and a declaration in accordance with Article 310 of the Convention, both declarations being referred to in the instrument of formal confirmation;
  - (c) the Community should refrain from opting for a specific dispute-settlement procedure at this stage, but the Council and the Commission undertake to reconsider the matter once the procedures have been in operation for long enough, and in any case before 31 December 1998;
  - (d) the Law of the Sea Working Party should oversee preparations for the sessions of the International Seabed Authority in accordance with its mandate of 12 January 1995;
  - (e) the assent of the European Parliament should be sought owing to the special institutional framework set up under Part XI of the Convention and the associated Agreement;
  - (f) the opinion of the Economic and Social Committee should be sought.

**PROPOSAL FOR A COUNCIL DECISION CONCERNING THE CONCLUSION BY THE EUROPEAN COMMUNITY OF THE 10 DECEMBER 1982 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA AND THE 28 JULY 1994 AGREEMENT ON THE APPLICATION OF PART XI OF THAT CONVENTION**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 43, 113 and 130s(1) in conjunction with the first sentence of Article 228(2) and the second subparagraph of Article 228(3) thereof,

Having regard to the proposal from the Commission,<sup>1</sup>

Having regard to the assent of the European Parliament,<sup>2</sup>

Having regard to the opinion of the Economic and Social Committee,<sup>3</sup>

Whereas the European Community is a signatory to the United Nations Convention on the Law of the Sea (hereinafter referred to as "the Convention") and the Agreement on the application of Part XI thereof (hereinafter referred to as "the Agreement");

Whereas the Convention and the Agreement have entered into force and a majority of the Community's Member States are parties to them; whereas the ratification process is under way in the other Member States;

Whereas the conditions permitting the Community to deposit the instrument of formal confirmation provided for in Article 3 of Annex IX to the Convention and referred to in the Agreement have been fulfilled;

Whereas the Community has been applying the Agreement and Part XI of the Convention provisionally since 16 November 1994 and is currently a provisional member of the International Seabed Authority;

Whereas the Convention and the Agreement should be approved to enable the Community to become a party to them;

Whereas the Community must, when depositing the instrument of formal confirmation, also deposit a declaration specifying the matters in respect of which competence has been transferred to it by its Member States and a declaration under Article 310 of the Convention;

Whereas the Community at this stage declines to choose a specific dispute-settlement procedure under Article 287 of the Convention; whereas this decision will, however, be reviewed within a specified period;

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<sup>1</sup> OJ No ...

<sup>2</sup> OJ No ...

<sup>3</sup> OJ No ...

Whereas the Community and its Member States are involved in the work of the International Seabed Authority and must therefore coordinate the positions they will take in that organization,

HAS DECIDED AS FOLLOWS:

#### Article 1

1. The United Nations Convention on the Law of the Sea and the Agreement on the application of Part XI thereof are hereby approved on behalf of the European Community.
2. The texts of the Convention and the Agreement<sup>1</sup> are to be found in Annex 1.
3. The Community's instrument of formal confirmation, which constitutes Annex 2, shall be deposited with the Secretary-General of the United Nations. It shall contain a declaration of competences (Annex 3) and a declaration under Article 310 of the Convention.

#### Article 2

The Community and its Member States shall coordinate the positions they adopt in bodies of the International Seabed Authority in accordance with the procedure laid down in Annex 4.

#### Article 3

The President of the Council is hereby authorized to designate the person empowered to deposit the instrument of formal confirmation in order to bind the Community.

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<sup>1</sup> Already published in the Annex to Council Decision 94/562/EC.

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ANNEX 1

FULL TEXTS OF THE UNITED NATIONS CONVENTION ON THE LAW OF  
THE SEA AND OF THE AGREEMENT ON THE IMPLEMENTATION OF  
PART XI THEREOF